SINGAPORE REPORTS

Banque Paribas v Citibank NA

COURT OF APPEAL (SINGAPORE) – CIVIL APPEAL NO 37 OF 1986
WEE CHONG JIN CJ, LAI KEW CHAI AND THEAN JJ
13 FEBRUARY 1989

Contract – Sale of salvage claims to both appellants and respondents – Dispute on who were rightful purchasers of claims – Whether offer to respondents remained open for acceptance or was cancelled by subsequent letter of offer containing different salvage claims – Interpretation of offers

A company, Selco Salvage Ltd ('Selco'), and the respondents entered into an agreement under which Selco would offer to sell to the respondents from time to time salvage claims on the terms and conditions therein stated. By a letter dated 14 October 1985, Selco offered to sell to the respondents the salvage claims in respect of nine vessels. On 7 November 1985, by a letter of that date, Selco made an offer to the respondents to sell their salvage claims in respect of four vessels which were also listed in the 14 October 1985 letter. The respondents, by their letter of 7 November 1985, purchased the salvage claims regarding these four vessels.

In the meantime, Selco had entered into an agreement with the appellants under which Selco would offer to sell to the appellants from time to time salvage claims. On 31 October 1985, Selco offered to sell to the appellants salvage claims in respect of five vessels which were also part of the nine salvage claims offered for sale in the 14 October 1985 letter by Selco to the respondents. The offer was accepted and on 23 October 1985 the appellants purchased these five salvage claims. A dispute subsequently arose between the appellants and the respondents in respect of the five salvage claims and the appellants sought a declaration that they were the purchasers and assignees of the interest of Selco in the five salvage claims. The respondents claimed that on 20 November 1985, they had purchased the five salvage claims without any notice of the appellants' interest and in turn counterclaimed for a declaration that they were the purchasers and assignees of the same interest of Selco. The High Court ruled, inter alia, that the respondents were purchasers and assignees of Selco's interest in the five salvage claims and that the rights of the respondents had priority over the rights of the appellants. The appellants appealed to the Court of Appeal.

At the appeal, the respondents argued that the offer by Selco to sell their five salvage claims, which was listed as part of the nine salvage claims in their 14 October 1985 letter, still remained open and available for acceptance by them and that they finally accepted the offer on 20 November 1985.

Held, allowing the appeal:

(1) The 7 November letter written by Selco to the respondents contained the vital paragraph, namely, 'this letter will supersede our previous letter reference no A/DW dated 14 October 1985', ie the 14 October letter. On the true construction of the 7 November letter, the only meaning one can give to this paragraph is that the 14 October letter had been replaced or substituted by the 7 November letter and the effect of that is that any offer contained in the 14 October letter which had been accepted had been withdrawn. Selco had, on 7 November 1985, in clear and unequivocal terms, withdrawn or cancelled the offer contained in the 14 October letter and thenceforth there was no offer for the sale of the five salvage claims which remained open and available for acceptance by the respondent on 20 November 1985 or any other date.

Appeal from: Originating Summons No 253 of 1986 (High Court, Singapore)

Woo Bih Li for the appellants.
Thio Su Mien (*Shirley Lim* with her) for the respondents.

Cur Adv Vult

Thean J: The facts that gave rise to the dispute between the appellants and the respondents were these. A company, Selco Salvage Ltd ('Selco'), and the respondents entered into an agreement dated 1 October 1984 under which Selco would offer to sell to the respondents from time to time salvage claims on the terms and conditions therein stated. Pursuant to the agreement, the respondents in December 1984 purchased from Selco the latter's salvage claims in respect of the vessels 'Al Ahood', 'Gaz Fountain', 'Star of Texas', and payment of the purchase price was made to Selco. The purchase price of the salvage claim in respect of 'Al Ahood' was US$8,400,000. About ten months later, on 1 October 1985, Selco in writing offered to re-purchase from the respondents the salvage claims relating to the three vessels for a sum of US$11,480,000. On the same day, by a separate letter, Selco offered to sell to the respondents salvage claims relating to three vessels, 'Tiburon', 'Eastern Star' and 'Chemical Venture', for the same amount of US$11,480,000. The respondents, however, did not accept either of the offers.

On 14 October 1985, Selco again offered in writing to re-purchase the salvage claim in respect of the vessel 'Al Ahood' for US$8,400,000 and by a separate letter of the same date offered to sell to the respondents the salvage claims in respect of nine vessels for the same amount. It is convenient at this stage to set out in full this letter which is as follows:

> Dear Sirs
>
> Agreement To Purchase Of Salvage Claims
>
> We hereby request you to purchase from us pursuant to the purchase of salvage claims deed dated 1 October 1984, concluded between yourselves and ourselves all our rights title and interest under salvage claims of the following:

Name of vessel (casualty)	*Amount*
Ceyhan	US$1,960,000
Kypros & Tjigombong 1	483,000
M Vatan	2,450,000
Eastern Star	546,000
Amethyst	245,000
Oriental Importer	450,000
Florida	866,000
Chemical Venture	1.400,000
	US$8,400,000

We agree that the purchase made by you pursuant to this request shall be governed by the terms and conditions of the said purchase of salvage claims deed.

Please credit the proceeds to our US dollar call account no 0-014540-016 with you.

Yours truly
Selco Salvage Ltd
Sgd
Authorized signatories

For easy reference we shall call this the '14 October letter'.

On or about 7 November 1985, two events occurred. It is not clear from the evidence which of them occurred first, but for convenience we set them out in the following sequence. First, Selco by a letter dated 7 November 1985 made an offer to the respondents to sell their salvage claims in respect of four vessels, 'M Vatan', 'Eastern Star', 'Oriental Importer' and 'Florida'. This letter reads as follows:

Dear Sirs

Agreement to Purchase of Salvage Claims

We hereby request you to purchase from us pursuant to the purchase of salvage claims deed dated 1 October 1984, concluded between yourselves and ourselves all our rights title and interest under the salvage agreements, guarantees and indemnities for the salvage claims of the following:

Name of Vessel (casualty)	*Amount*
M Vatan	US$2,450,000.00
Eastern Star	546,000.00
Oriental Importer	450,000.00
Florida	866,000.00
	US$4,312,000.00

We agree that the purchase made by you pursuant to this request shall be governed by the terms and conditions of the said purchase of salvage claims deed.

Please credit the proceeds to our US dollar call account no 0-014540-016 with you.

This letter will supersede our previous letter reference no A/DW dated 14 October 1985.

Yours truly
Selco Salvage Ltd
Sgd
Authorized signatories

We shall call this the '7 November letter'. Secondly, the respondents purchased the salvage claims in respect of four vessels, 'Eastern Star', 'M Vatan', 'Oriental Importer' and 'Florida' for US$4,312,000 as evidenced by their letter of 7 November 1985 to Selco which is as follows:

Dear Kok Liang,

Al Ahood Receivable

We have today offset the estimated salvage awards of the following casualties, viz:

Eastern Star	US$ 546,000
M Vatan	$2,450,000
Oriental Importer	$ 450,000
Florida	$ 866,000
Total	US$4,312,000

against the Al Ahood receivables in the sum of US$3,900,000.

Please make arrangement to pay us the balance of the Al Ahood award amounting to US$4,500,000 plus any shortfall if the abovesaid estimated awards fall below US$3,900,000 by December 31 1985.

Yours sincerely
Sgd
Chan Heng Tong
Assistant vice president
Real estate/Construction/Shipping

In the meantime, Selco presumably had sought other sources of finance, and on 23 October 1985, entered into an agreement with the appellants under which Selco would offer to sell to the appellants from time to time salvage claims on the terms and conditions therein provided. This agreement is substantially similar to that made between Selco and the respondents on 1 October 1984. On 31 October 1985, Selco offered to sell to the appellants salvage claims in respect of five vessels as follows:

Name of vessel (casualty)	*Amount*
Ceyhan	US$1,960,000
Kypros & Tjigombong 1	483,000
Amethyst	245,000
Chemical Venture	1,400,000
	US$4,088,000

This offer was accepted and the appellants purchased these salvage claims (the 'five salvage claims').

A dispute subsequently arose between the appellants and the respondents in respect of the five salvage claims. The respondents asserted that on 20 November 1985, they had purchased the five salvage claims without any notice of the appellants' interest therein and offset the price payable against the outstanding amount owing to them by Selco and that they had immediately thereafter given notice of their interest to the respective parties concerned. In consequence, on 24 February 1986, the appellants initiated legal proceedings against the respondents in Originating Summons No 253 of 1986 seeking a declaration that the appellants were purchasers and assignees of the interest of Selco in the five salvage claims. This was resisted by the respondents who counterclaimed for a declaration that they were the purchasers and assignees of the same interest of Selco. The matter was heard before AP Rajah J, and at the conclusion thereof he made an order as follows:

(i) the appellants are the purchasers and assignees of Selco's interest in the five salvage claims;

(ii) the respondents are also purchasers and assignees of Selco's interest in the five salvage claims, and that the respondents' rights in respect of the salvage claims of 'M Ceyhan', 'Kypros', 'Amethyst' and 'Chemical Venture' have priority over the rights of the appellants in respect of such salvage claims; and that in respect of the salvage claim of 'Tjigombong 1' the appellants have priority over the respondents in respect of the rights of Selco to the salvage agreement of 'Tjigombong 1' and the respondents have priority over the appellants in respect of their rights in the guarantee issued by Asia Insurance Co Ltd dated 22 November 1984 in respect of 'Tjigombong 1'.

The learned judge disallowed costs to the appellants in respect of their claim and ordered costs to be paid to the respondents in respect of their counterclaim. The appellants appealed against that part of the decision of the learned judge which determined that the respondents were purchasers and assignees of the interest of Selco in the five salvage claims and that the rights of the respondents had priority over the rights of the appellants, and also against that part of the decision on costs. At the conclusion of the hearing of the appeal, we allowed it with costs here and below and made an order in terms of the originating summons.

The point involved in this appeal is a very narrow one; it turned on the construction of the 7 November letter in relation to the offer contained in the 14 October letter. There was no dispute that the appellants on or about 23 October 1985 did purchase Selco's interest in the five salvage claims. Therefore, in the absence of any competing claim, the appellants were solely entitled to what they acquired. The respondents, however, claimed that on 20 November 1985, they also purchased Selco's interest in the five salvage claims; that at the time of their purchase they had no notice of the appellants' interest; that immediately thereafter they gave the requisite notices to the parties concerned, and that therefore their claim ranked ahead of the appellants'. The immediate question, indeed, as it turned out, the only question in this appeal, was whether the respondents did purchase Selco's interest in the five salvage claims as alleged by them.

As we have said, Selco by the 14 October letter offered to sell to the respondents salvage claims in respect of nine vessels, which included the five salvage claims. Soon thereafter, on or before 7 November 1985 the respondents purchased Selco's salvage claims of four vessels, but not the five salvage claims. It is, however, the case of the respondents that the offer to sell the five salvage claims then still remained open and available for acceptance by them, and that they finally accepted the offer on 20 November 1985. Unfortunately, there was an insurmountable difficulty in the way, and that was the 7 November letter written by Selco to the respondents, which contained the vital paragraph, namely, 'this letter will supersede our previous letter reference no A/DW dated 14 October 1985', that is, the 14 October letter. On the true construction of the 7 November letter the only meaning one can give to this paragraph is that the 14 October letter had been replaced or substituted by the 7 November letter and the effect of that is that any offer contained in the 14 October letter which had not been accepted had been withdrawn. In our opinion, Selco had, on 7 November 1985 in clear and unequivocal terms, withdrawn or cancelled the offer contained in the 14 October letter and thenceforth there was no offer for the sale of the five salvage claims which remained open and available for acceptance by the respondent on 20 November 1985 or any other date. Hence, the case of the respondents that they accepted Selco's offer as contained in the 14 October letter fell to the ground. In the result, their claims failed, and we so held.

Appeal allowed.

Solicitors: *Allen & Gledhill*; *Drew & Napier*.

Reported by *Ng Sheau Jiuan*

Chew Kia Ngee v Singapore Society of Accountants

HIGH COURT (SINGAPORE) – DISTRICT COURT APPEAL NO 60 OF 1987
THEAN J
28 DECEMBER 1988

Professions – Accountants – Auditor signing partially completed statutory form and leaving instructions to subordinate to complete form in accordance with working draft before sending to Monetary Authority of Singapore (MAS) – Administrative slip-up resulting in partially completed form being sent to MAS – Letter of complaint by MAS to Singapore Society of Accountants – Whether auditor's act amounted to act discreditable to an accountant – Whether delegation to subordinate to complete form is reckless – Accountants Act (Cap 2, 1985 Ed), s 33(1)(b)

Professions – Accountants – Auditor signing partially completed statutory form and leaving instructions to subordinate to complete form in accordance with working draft before sending to Monetary Authority of Singapore (MAS) – Administrative slip-up resulting in partially completed form being sent to MAS – Letter of complaint by MAS to Singapore Society of Accountants – Disciplinary committee's finding that auditor's act amounted to act discreditable to an accountant – Auditor suspended from practice for five years – Whether excessive – Maximum penalty of $500 should be sufficient and appropriate – Accountants Act (Cap 2, 1985 Ed), s 33(3)(b) & (c)